

# COMMITTEE OF BAR EXAMINERS

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*Committee Chair: Alex Lawrence ♦ Executive Director, State Bar of California: Leah Wilson ♦ (415) 538-2000 ♦ (213) 765-1000 ♦ Toll-Free Complaint Hotline: 1-800-843-9053 ♦ Ethics Hotline: 1-800-238-4427 ♦ Staff Contact: Kim Wong (415) 538-2319 ♦ Internet: [www.calbar.ca.gov](http://www.calbar.ca.gov)*

*Protection of the public, which includes support for greater access to, and inclusion in, the legal system, shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

— Business and Professions Code § 6001.1

The Committee of Bar Examiners (Committee or CBE) was established in 1939 by the State Bar of California, pursuant to Business and Professions Code section 6046, to examine all applicants for admission to practice law; administer the requirements for admission to practice law; and certify to the Supreme Court for admission those applicants who fulfill the statutory requirements to practice. Specifically, the Committee develops, administers, and grades the California bar examination, oversees moral character of State Bar applicants; accredits law schools in California that are not accredited by the American Bar Association (ABA) (collectively, “California Accredited Law Schools” (CALs)); and oversees additional registered unaccredited law schools.

The Committee is comprised of 19 members: ten attorneys or judges and nine public members. At least one of the attorney members must have been admitted to practice law within three years from the date of appointment to CBE. Pursuant to section 6046.5 of the Business and Professions Code, the Speaker of the Assembly, the Senate Rules Committee, and the Governor each appoint three public members.

Specific rules pertaining to admission to practice law in California are set forth in Title 9 of the California Rules of Court and Title 4 of the Rules of the State Bar. Pursuant to Rule 9.4 of the California Rules of Court, the Supreme Court is responsible for appointing the ten attorney members of the Committee, at least one of which must be a judicial officer in this state, and the balance must be licensees of the State Bar. All members of the Committee serve four-year terms.

Rule 9.5 of the California Rules of Court requires that all “rules adopted by [CBE] pertaining to the admission to practice law must be approved by the Board of Trustees and then submitted to the Supreme Court for its review and approval.”

Effective January 1, 2018, pursuant to section 6026.7 of the Business and Professions Code, as amended by [SB 36 \(Jackson\) \(Chapter 422, Statutes of 2017\)](#), CBE is now subject to the Bagley-Keene Open Meeting Act, section 11120 et seq. of the Government Code, and must conduct its business in public, with notice as specified in the Act.

At this writing, CBE divides its work into four subcommittees: Operations & Management (exam administration, fee and deadline waivers, reports of alleged cheating, and admissions budget and personnel); Moral Character (conducting moral character evaluations of State Bar applicants); Examinations (administration, development, and grading of the First Year Law Student’s Exam and the California Bar Exam); and Educational Standards (administering the CALS accreditation process, and regulating the registration of unaccredited schools).

The State Bar Board of Governors (the predecessors to the current Board of Trustees) created the Law School Assembly (LSA) in 1986 as a forum for disseminating information from CBE to the law schools and providing feedback from the law schools to CBE. One representative from each law school in California (whether ABA, Cal-accredited, or unaccredited), CBE members, and liaisons from the State Bar Board of Trustees comprise the LSA. Each school elects

its own representative at LSA's annual meeting. Law schools participate in setting the agenda for the LSA's annual meeting, where discussions involve relevant topics of law schools' shared interests and policy questions concerning law students. Meetings are open to the public; they are noticed on the State Bar's website at least ten days in advance, are required to comply with the Bagley-Keene Open Meetings Act, and are webcast when feasible. Law schools are permitted to attend via teleconference.

The Law School Council (LSC) considers matters related to the content and format of the Bar examination, coordinates curricula related to bar-tested subjects and aspects of law school education relevant to licensure, suggests topics for ad hoc working groups, and identifies representatives from ABA-accredited law schools to serve on ad hoc working groups. Seven deans or their representatives from ABA-approved schools comprise the LSC. Members serve three-year terms, and the Chair serves for one year.

In 2019, CBE established the Committee of State Bar Accredited and Registered Schools (CSBARS) to replace the Advisory Committee on California Accredited Law Schools Rules (RAC). CSBARS provides advice and feedback to CBE and the State Bar on matters relating to the promulgation of new rules, guidelines, and amendments to the Accredited Law School Rules and the Guidelines for Accredited Law School Rules. CSBARS suggests topics for ad hoc working groups within the State Bar's regulatory scope and identifies law school deans or administrators to serve on ad hoc working groups. These groups comply with the Bagley-Keene Open Meetings Act, participants can attend via teleconference with proper notice, and the meetings are webcast when feasible. During regularly scheduled CBE meetings, CSBARS presents its recommendations. There are seven members that comprise CSBARS: three accredited law school deans, two registered unaccredited law school deans, and two members selected by CBE, one of

whom may include a non-voting consultant with expertise in accreditation issues. Each member serves a three-year term.

On August 20, 2021, the California Supreme Court [reappointed](#) attorneys Alex Chan, Esther Lin, Bethany Peak, and Judge James Herman to CBE for four-year terms. On the same day, the Court appointed public member Alex Lawrence to serve as Committee Chair for a one-year term and attorney Paul Kramer as Committee Vice Chair.

## HIGHLIGHTS

### **Blue Ribbon Commission on the Future of the Bar Exam Commences Meetings**

On September 1, 2021, the [Blue Ribbon Commission on the Future of the Bar Exam](#) held its second [meeting](#).[\[Part 1, Part 2\]](#) In 2020, the California Supreme Court and the Board of Trustees established the Blue Ribbon Commission to evaluate recommendations made by the California Attorney Practice Analysis (CAPA) Working Group, as well as other issues relating to the bar exam's format and pass score. *[see [26:1 CRLR 129–130](#)]* The commission's [charter](#) tasks the group of nineteen [members](#) with making four specific recommendations: (1) whether a bar exam is the correct tool to determine minimum competency for the practice of law; (2) whether the Universal Bar Exam (UBE) should be adopted in California; (3) if the UBE is recommended, whether a supplement is necessary; and (4) what revisions must be made to the California Bar Exam if the UBE is not recommended.

At its first [meeting](#) on July 6, 2021 [\[Part 1, Part 2\]](#), the Blue Ribbon Commission began by inviting public comment and reviewing the commission's charter before discussing the current state of the California Bar Exam, the relationship between the exam and the Multistate Bar Exam

(MBE), CAPA's findings and recommendations, the UBE, and testing methods. Several panelists expressed concern with the National Committee of Bar Examiners' potential elimination of the MBE and discussed how to replace it if necessary. The meeting concluded with a discussion of the next steps, where several panelists felt it was necessary to initially focus on the threshold issue of whether or not to have a bar exam in the next meeting.

At the September 1, 2021, meeting, the commission focused primarily on the first task of deciding whether California should have a bar exam. The meeting opened with public comment covering the purpose of licensing exams, a proposed mission statement, an evaluation of the future UBE in contrast with a state-specific exam, and alternatives to conventional exams for licensure. Several experts presented alternatives to exams such as clinical residencies, apprenticeship, and diploma licensure. An expert from the Wisconsin Board of Bar Examiners presented data from that state showing there was no difference in disciplinary actions against attorneys who passed the Wisconsin Bar Exam and those who were licensed by diploma privilege. The commission did not vote on the proposed mission statement before concluding this meeting, but members were asked to prepare their thoughts for discussion at the next meeting on the threshold question of whether to have a bar exam.

The commission is expected to present its final report of findings and recommendations sometime in 2022.

## **State Bar Concludes Investigation on July 2021 Bar Exam Technological Issues**

On September 27, 2021, the State Bar published a [news release](#) announcing the conclusion of its investigation into technological issues experienced by remote Bar Exam takers in July of

2021. Amidst the COVID-19 pandemic, the State Bar began administering exams remotely on October 5–6, 2020. [see [26:1 CRLR 123](#)] Some examinees reported technological issues with the October 2020 exam, but the State Bar labeled the unprecedented remote exam as a success, according to news sources. On July 27–28, 2021, 7,931 California Bar applicants took the Bar Exam, with 7,742 of those applicants taking the exam online using ExamSoft software.

As reported by examinees, issues with the July exam included frozen screens, software crashes, and otherwise lost time or content while taking the exam. According to the State Bar news release, a common problem among these applicants was the experience of a “black screen” or “blue screen,” and applicants had to restart their laptops or computers to resume the exam. In addition, one percent of bar applicants nationwide required technical support to complete their exams. The vast majority of affected applicants nationwide, however, did not experience lost time or content as a result of this technological issue.

As part of its investigation, the State Bar evaluated ExamSoft data regarding the number of applicants impacted, the type of impact, and logs of calls to ExamSoft, in addition to logs of calls to the Office of Admissions during and after the exam. The investigation found that nearly 31% of California test takers experienced one or more technical issues related to the software memory utilization, and approximately 2%, or 158 examinees, had meaningful impacts of lost time or content. As a result, the State Bar accepted requests from those 158 examinees to retake the portion of the exam they were working on when the technological issues arose. While only a small percentage of examinees experienced meaningful adverse effects from the technical issues, Donna Hershkowitz, State Bar Chief of Programs, nevertheless acknowledged that “any unwelcome technological disruption is cause for concern.”

On November 12, 2021, the State Bar released the [results](#) of the July 2021 exam. Fifty-three percent of applicants passed the exam, down 7.8% from the prior year. The State Bar worked with a psychometrician to [adjust scores](#) for those who experienced technological issues. Board of Trustees Chair Ruben Duran admitted, however, “it was clear that there was no way to fully quantify what impacts these issues had on examinees.” The State Bar will release more detailed statistics from the exam in four to six weeks.

## **California Legislature Urges United States Congress to Amend GI Benefits Requirements**

[Assembly Joint Resolution \(AJR\) No. 12 \(Stone\)](#), as filed with the Secretary of State on September 7, 2021, encourages the United States Congress to eliminate the requirements that a law school must be accredited by a specialized accreditor and that law school graduates must be able to take the bar examination in any state in order to receive GI benefits. This legislative resolution is in response to [H.R. 7105](#), which amended sections 3676(c)(14)(B) and 3676(c)(15)(B) of Title 38 of the United States Code to add these requirements. The resolution was introduced on April 15, 2021, and chaptered by the Secretary of State on September 7, 2021 (Chapter 118, Statutes of 2021). [[26:2 CRLR 150](#)]

According to AJR No. 12, the ABA is the only specialized accrediting agency for legal programs in the United States. As a result, the amendment to federal law rendered veterans at California accredited law schools ineligible for GI benefits. There are currently 1.9 million veterans living in California, and 23 California accredited law schools in the state. California, as the most populous state in the nation, is the only state with its own law school accrediting agency.

The legislature noted several reasons for the adoption of AJR No. 12. First, California accredited law schools are often located in rural and underserved communities where no other viable alternative law schools for veterans exist. The location of these schools also leads to more legal services for communities in need when veteran graduates stay in the area after admission to the State Bar. Additionally, California accredited law schools often accept students with lower Law School Admission Test (LSAT) scores than ABA-accredited law schools. As a result, they provide a pathway for admission to the Bar for veterans who do not score high enough to attend an ABA-accredited school. California accredited law schools also often admit a more diverse student population than ABA-accredited schools, providing more opportunities for admission for a diverse group of veterans in California. Finally, as stated in the resolution, some California accredited law schools have “significantly higher” California bar exam passage rates as well as “far lower” tuition costs than some ABA-accredited schools, making them a viable alternative for veterans.

After passage, AJR No. 12 was sent to the Speaker of the U.S. House of Representatives, the Majority Leader of the United States Senate, and each Senator and Representative from California in the U.S. Congress.

## **MAJOR PUBLICATIONS**

The following reports/studies have been conducted by or about the State Bar of California as it relates to the work of CBE during this reporting period:

- [\*Report to the Supreme Court on the February 2021 Bar Examination\*](#), Committee of Bar Examiners, June 18, 2021 (Pursuant to Rule 4.60(B) of the Rules of the State Bar of California, provided a report on the February 2021 administration of the California Bar Exam. It



reports receipt of 5,040 applications, of which 3,530 completed the exam and received results. 37.2 percent passed (1,151 individuals). The report also provides a summary of the exam grading process. The exam was the second in California to be administered online and remotely proctored using exam software.

## **RULEMAKING**

The following is a status update on recent rulemaking proceedings by the State Bar of California as it relates to the work of CBE:

- **New Rules for Accredited Law Schools:** At its May 13, 2021 [meeting](#) (Item 706), the State Bar Board of Trustees adopted the revised Rules for Accreditation of California Law Schools. The [new rules](#) focus on consumer protection, transparency, student success, diversity, equity, inclusion, and preparation for licensure and professionalism. On September 23, 2021, the State Bar Board of Trustees [recommended](#) that proposed amendments to Rule 4.160(D)(6) of the State Bar of California be posted for a 30-day public comment period. The [proposed amendments](#), recommended by CBE, would change technical requirements of the Five-Year Minimum Cumulative Bar Pass Rate in response to the creation of the Provisional Licensure Program's Expanded Program and the rescheduling of the July 2020 California Bar Exam to October 2020. Without these amendments, the new rules are effective January 1, 2022, and law schools must comply by January 1, 2024. [[26:2 CRLR 149–150](#)]

- **Order Concerning the February 2022 California Bar Examination:** On October 20, 2021, the California Supreme Court [ordered](#) that the California Bar Exam will be held in person from February 22–23, 2022. This order supersedes the February 26, 2021 [order](#) that mandated the

July 2021 California Bar Exam be administered remotely in response to the COVID-19 pandemic. The new order is subject to any state or local public health restrictions.

## LEGISLATION

- [AJR 12 \(Stone\)](#), as introduced on April 15, 2021, urges the United States Congress to revise the United States Code to remove the requirement that, to be eligible for GI benefits, a law school be accredited by a specialized accreditor and the overly broad restriction that graduates must be eligible to sit for a bar examination in any state. The resolution was chaptered September 7, 2021 (Chapter 118, Statutes of 2021) (see HIGHLIGHTS).

## LITIGATION

- *Childs v. State Bar of California, et al.*, Case No. CGC-21-590115 (Super. Ct. San Francisco County). On August 16, 2021, the Court sustained the defendants' demurrer before [dismissing](#) the plaintiff's complaint on October 14, 2021. On March 15, 2021, an aspiring attorney filed a [complaint](#) in the San Francisco Superior Court against the State Bar of California, its Interim Executive Director, its Interim Chief Trial Counsel, and an investigator alleging libel and privacy violations. As alleged, the State Bar staff members communicated regarding the plaintiff's criminal history, while the plaintiff claims that she does not have a criminal history. On November 12, the plaintiff [appealed](#) to the California Court of Appeal. At this writing, the plaintiff's appeal is pending.

- *Bhandari v. State Bar of California, et al.*, Case No. S267455 (Cal.). On May 12, 2021, the California Supreme Court denied the plaintiff's petition for writ of mandate. On September 29, 2020, the plaintiff filed a [petition for writ of mandate](#) against the State Bar, its Interim Executive Director, and CBE, alleging that defendants emailed topics contained on the

July 2019 California Bar Exam to 16 law school deans, to the plaintiff's detriment. The plaintiff alleges he drove 60 miles from home to take the exam before being notified of the option to be refunded due to the emails. On January 15, 2021, the San Francisco Superior Court [ordered](#) transfer of the plaintiff's writ petition to the California Supreme Court because the California Supreme Court has sole original jurisdiction over matters concerning attorney admissions processes.

- ***Tuma v. State Bar of California, Case No. A161037 (Cal. Ct. App., 1st Dist.).***

On May 27, 2021, The California Courts of Appeal [reversed](#) the San Francisco Superior Court's dismissal of plaintiff's complaint. On May 26, 2020, the plaintiff filed a complaint against the State Bar, alleging that defendant violated the Bagley-Keene Open Meeting Act and the California Public Records Act. Specifically, the plaintiff alleges that the State Bar improperly discussed "Action of Partial Invalidation of Applicant's Test Product Due to Printing Error" in a closed session before rejecting plaintiff's records request related to the discussion. On July 23, 2020, the trial court sustained defendant's demurrer for failure to state a cause of action under each statute. Upon appeal, the California Court of Appeal affirmed the demurrer as to the Bagley-Keene Open Meeting Act and reversed as to the California Public Records Act because the trial court erred in not giving plaintiff leave to amend pleading defects.